

Racial Equity and Social Justice (RESJ) Impact Statement

Office of Legislative Oversight

BILL 11-22: BUILDINGS – LACTATION ROOMS IN COUNTY BUILDINGS - REQUIRED

SUMMARY

The Office of Legislative Oversight (OLO) cannot determine the racial equity and social justice (RESJ) impact of Bill 11-22 without additional information on where lactating employees work in Montgomery County Government (MCG) by race and ethnicity. Available data suggests that Bill 11-22 could help narrow racial and social inequities in breastfeeding as Black, Indigenous, and Other People of Color (BIPOC) are over-represented among women in the County workforce and thus are likely to benefit more from enhanced lactation rooms and policies than White women. Data disaggregated by race and ethnicity on where women work in the County (e.g., offices, warehouses) is required to offer a more definitive RESJ assessment. To improve the anticipated RESJ impact of this Bill, OLO offers several recommended amendments for consideration.

PURPOSE OF RESJ IMPACT STATEMENT

The purpose of racial equity and social justice (RESJ) impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 11-22

As explained by the Centers for Disease Control and Prevention (CDC), “[b]reastfeeding has health benefits for both babies and mothers. Breast milk provides a baby with ideal nutrition and supports growth and development.”³ Among numerous benefits, breastfeeding is associated with reduced risk for various infections, sudden infant death syndrome, type 1 diabetes, obesity among infants, as well as reduced risk for high blood pressure, type 2 diabetes, ovarian cancer, and breast cancer among mothers.⁴ The American Academy of Pediatrics recommends exclusively breastfeeding infants for six months.⁵

The goal of Bill 11-22 is to promote breastfeeding by supporting County employees that wish to express milk during the workday. Toward this end, if enacted, the Bill would require the County to:⁶

- Provide lactation rooms or alternative accommodations for County employees in County buildings,
- Provide County employees break time for lactation needs,
- Establish personnel regulations for certain accommodations, and
- Post educational materials about the Bill on the County’s website.

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The Bill expands support for County employees to express milk in the workplace currently guaranteed under federal law. The Affordable Care Act (ACA) requires employers to provide a private, functional, and usable space that is not a bathroom for employees to express milk.⁷ However, employers are not required to create a permanent space for lactation. The ACA also requires employers to provide reasonable break time for employees to express milk for a nursing child up to one year after the child's birth,⁸ as well as for health insurers to offer breast pumps to new parents.⁹

Overall, the Bill seeks to create consistency in County employees' access to lactation rooms, if feasible, and to extend break time support for parents seeking to express milk beyond their nursing child's first birthday. Bill 11-22 was introduced to the Council on June 14, 2022.

BREASTFEEDING AND RACIAL EQUITY

Racial disparities in breastfeeding reflect systemic racism, past and present. Historically, Black women were enslaved and many were often forced to serve as wet nurses for White families.^{10,11} After the Civil War, many Black women faced occupational segregation and had to continue to work as wet nurses. Unaddressed historical trauma from slavery and racism likely contributes to lower rates of breastfeeding among Black women and perhaps diminished support for breastfeeding among Black families and communities.¹² Other systemic forces driving breastfeeding disparities include:

- Government policies and programs that hindered Black women from breastfeeding. For instance, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) launched in 1974 provided Black women with less support for breastfeeding than White women, pushing them to formula-feeding.¹³
- Lack of access to quality health care among BIPOC. For instance, research has demonstrated that staff in hospitals serving more Black patients are less likely to help Black women to initiate breastfeeding or offer lactation support after giving birth.¹⁴ Further, Black infants are nine times as likely to receive formula in hospitals than White infants.¹⁵
- Continuing occupational segregation and the racial wealth divide where new BIPOC mothers cannot afford to take meaningful maternity leave (of at least 12 weeks) and tend to have inflexible work schedules that prevent nursing and expressing milk consistently.¹⁶

Research has shown that current workplace breastfeeding policies tend to yield more benefits to White, affluent, and highly educated mothers,¹⁷ likely because they have the resources to take advantage of them.

While breastfeeding is an optimal source of nutrition for most infants, racial and ethnic disparities in breastfeeding persist.¹⁸ In 2019, breastfeeding was initiated for 73.6 percent of Black infants, compared to 85.5 percent of White infants, 87.4 percent of Latinx infants and 90.3 percent of Asian infants. Breastfeeding initiation rates in Maryland were slightly higher, though the pattern of disparity was similar to the nation, with Black infants having the lowest rate of breastfeeding initiation (82.0) and Asian, Latinx, and White infants having the highest rates (95.4, 94.1, 86.4).¹⁹

The ACA includes legal protections for breastfeeding in the workplace. However, social, economic, and legal barriers to breastfeeding continue and are compounded for BIPOC.^{20,21} Research suggests that workplace supports – including paid leave, flexible work schedules, and lactation supports and interventions – can improve breastfeeding outcomes.^{22,23} As described by researchers at Yale, “[r]elatively low-cost interventions such as lactation rooms and nursing breaks may reduce absenteeism and improve workforce performance, commitment, and retention, while also improving breastfeeding outcomes.”²⁴ They also share the three best practices for breastfeeding interventions in the workplace:²⁵

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- Raise awareness of available programs among working mothers and the general work environment,
- Change the workplace culture, and building manager/supervisor and co-worker support, and
- Provide enough time and adequate space and facilities for employees to breastfeed or express breast milk during the workday.

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 11-22 on racial equity and social justice in the County, OLO staff considered two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered the demographics of the County workforce overall and by position category. Data in Table 1 shows that both White and Black people are overrepresented among County employees compared to their shares of the adult population in Montgomery County. The high level of over-representation of Black people among County employees suggests this Bill could especially benefit them. Moreover, the significant benefits to Black workers could potentially offset the lesser benefits experienced among Latinx and Asian persons who are under-represented in the County workforce and in turn would experience fewer benefits than other racial and ethnic groups. If the magnitude of benefit to Black workers was especially high, Bill 11-22 could potentially improve RESJ in the County.

Table 1: Percent of Residents 18 Years and Over and MCG Full-Time Workforce by Race and Ethnicity, Montgomery County²⁶

Race and ethnicity ²⁷	Residents 18 Years and Over	MCG Full-Time Employees	Difference
American Indian or Alaska Native	0.1	0.4	+0.3
Asian	15.9	6.8	-9.1
Black	17.7	29.0	+11.3
Latinx	18.6	11.1	-7.6
Native Hawaiian/Other Pacific Islander	0.0	0.1	+0.1
Two or more races	3.4	1.2	-2.2
White	43.4	51.4	+8.0

Sources: 2020 Decennial Census (Table P4), Census Bureau. OLO Analysis of 2019 Personnel Management Review, Office of Human Resources via Data Montgomery.

A review of Office of Human Resources data also suggests that BIPOC employees will especially benefit from Bill 11-22. Using the share of BIPOC employees among all women in the County workforce as a proxy for BIPOC employees who nurse, OLO anticipates that lactating BIPOC employees will benefit most from Bill 11-22 since BIPOC women account for 56.3 percent of all women in the County's full-time workforce and 59.4 percent of women full-time workers between the ages of 20 and 45. The benefits of Bill 11-22 for BIPOC employees also suggests that this Bill could help reduce racial disparities in nursing initiation and continuation that would derive additional health benefits for BIPOC parents and their children.

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Table 2: Distribution of Women in MCG Full-Time Workforce by Age Group, Race and Ethnicity²⁸

Race and ethnicity	All Women	Ages 20-29	Ages 30-39	Ages 40-45
American Indian or Alaska Native	0.2	0.0	0.5	0.0
Asian	8.9	6.2	7.3	9.9
Black	31.8	22.8	30.3	32.1
Latinx	13.8	22.8	17.0	18.3
Native Hawaiian/Other Pacific Islander	0.0	0.0	0.0	0.3
Two or more races	1.5	3.4	3.8	1.3
White	43.7	44.8	41.1	38.1

Sources: OLO Analysis of 2019 Personnel Management Review, Office of Human Resources via Data Montgomery.

Of note, the majority of women full-time employees in the County are over 45 years of age (61.3 percent, 1788 employees), which suggests that this Bill is most likely to impact a smaller subset of employees (38.7 percent, 1129 employees).

Given the percentage of women employees in the County that are BIPOC, OLO finds that BIPOC women are likely to accrue greater benefits from Bill 11-22 than White women employees. As such, in response to the second question, OLO finds the Bill could narrow gaps in breast/chest feeding initiation and continuation by race and ethnicity. It is important to note, however, that additional data regarding the distribution of County women workers by race and ethnicity among office-, warehouse-, and field-based positions is required to offer a more definitive assessment of the anticipated RESJ impact of the Bill. In practice, it may be that BIPOC women are concentrated in warehouse- and field-based positions that are exempt from providing dedicated lactation rooms or make the use of such rooms impractical. Office-based staff will be the primary beneficiaries of the Bill but the race, ethnicity, and gender demographics of employees with work sites located in County office buildings remains unknown. In the absence of this data, OLO's assessment of the RESJ impact of Bill 11-22 is indeterminate.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²⁹ OLO cannot determine the RESJ impact of Bill 11-22 without additional information on which employees by race and ethnicity will have regular access to lactation rooms located in County office buildings. An analysis of available data suggests that the Bill could have a favorable impact on RESJ in the County as its benefits could disproportionately accrue to BIPOC employees.

Should the Council seek to improve the RESJ impact of Bill 11-22 through incorporating amendments or introducing companion legislation, they could consider partnering with BIPOC stakeholders to identify opportunities to support nursing among BIPOC employees and communities. As stated by the authors of *Achieving Breastfeeding Equity and Justice in Black Communities: Past, Present, and Future*, “[p]ublic health and policy priorities need to center on listening to Black women, and funding [BIPOC] organizations and researchers conducting innovative projects and research.”³⁰

More specifically, the Council could consider extending funding to the County Minority Health Initiatives (African American Health Program, Asian American Health Initiative, and Latino Health Program) to lead the projects that:

- Convene BIPOC stakeholders to offer recommendations for the Council to consider on how to improve breastfeeding initiation and duration rates for BIPOC parents and employees.

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- In addition to posting lactation program information on the County’s website, develop a peer consultation program for BIPOC employees and contractors (and Black women employees in particular) to support breastfeeding in the workplace and increase awareness of available services.

The Council can also consider implementing the following best practices for narrowing racial disparities in nursing as recommended by ChangeLab Solutions:³¹

- Mandate paid breaks for workers who are breastfeeding.
- Create requirements or incentives for hospitals to become Baby-Friendly³² or institute Baby-Friendly practices. This can include creating a model breastfeeding policy for hospitals and setting quality standards for maternity care to help hospitals achieve Baby-Friendly designation.
- Train or recruit more Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) breastfeeding peer educators in Black communities.
- Provide WIC counselors with training to dispel implicit and explicit racial stereotypes about Black women and breastfeeding.

Further, the Council can encourage the Montgomery County Delegation to advocate for changes to state law to help narrow racial disparities in nursing initiation and continuation as also recommended by ChangeLab Solutions:³³

- Create a government-funded paid family leave program that applies to all workplaces, including those most likely to employ groups with disproportionately low rates of breastfeeding (e.g. low-wage and hourly workers).
- Require Medicaid coverage of lactation support services, including with outpatient lactation consultants.
- Expand the types of practitioners who can provide Medicaid-reimbursable lactation counseling.
- Scale up WIC’s successful state and local breastfeeding interventions to the national level through incentives or requirements. Successful interventions include culturally relevant messaging, breast pumps available on demand, and revisions to the food package that address the for the nutritional needs of breastfeeding mothers.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffers Elaine Bonner-Tompkins, Senior Legislative Analyst, and Janmarie Peña, Performance Management and Data Analyst, drafted this RESJ impact statement.

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APPENDIX

Table 3: Number of Women in MCG Full-Time Workforce by Age Group, Race and Ethnicity³⁴

Race and ethnicity	All Women	Ages 20-29	Ages 30-39	Ages 40-45
American Indian or Alaska Native	7	0	3	0
Asian	259	9	44	38
Black	928	33	182	123
Latinx	403	33	102	70
Native Hawaiian/Other Pacific Islander	1	0	0	1
Two or more races	44	5	23	5
White	1,275	65	247	146
Total	2917	145	601	383

Sources: OLO Analysis of 2019 Personnel Management Review, Office of Human Resources via Data Montgomery.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ “Breastfeeding Benefits Both Baby and Mom,” Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Last Updated July 27, 2021. <https://www.cdc.gov/nccdphp/dnpao/features/breastfeeding-benefits/index.html>

⁴ Katelyn Chiang, Ruowei Li, Erica Anstey, and Cria Perrine, “Racial and Ethnic Disparities in Breastfeeding Initiation – United States, 2019,” Morbidity and Mortality Weekly Review, Center for Disease Control and Prevention, May 28, 2021. <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7021a1-h.pdf>

⁵ “American Academy of Pediatrics Calls for More Support for Breastfeeding Mothers within Updated Policy Recommendations,” American Academy of Pediatrics, June 27, 2022. <https://www.aap.org/en/news-room/news-releases/aap/2022/american-academy-of-pediatrics-calls-for-more-support-for-breastfeeding-mothers-within-updated-policy-recommendations/>

⁶ Bill 11-22, Buildings – Lactation Rooms in County Buildings – Required, Montgomery County, Maryland, Introduced June 14, 2022. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220614/20220614_3C.pdf

⁷ “Fact Sheet #73: Break Time for Nursing Mothers under the FLSA,” Wage and Hour Division, U.S. Department of Labor, Revised April 2018. <https://www.dol.gov/agencies/whd/fact-sheets/73-flsa-break-time-nursing-mothers>

⁸ Ibid

⁹ “Health Benefits & Coverage: Breastfeeding Benefits,” HealthCare.gov, U.S. Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services, Accessed July 13, 2022. <https://www.healthcare.gov/coverage/breast-feeding-benefits/>

¹⁰ Emily West and R. J. Knight, “Mothers’ Milk: Slavery, Wet-Nursing, and Black and White Women in the Antebellum South,” Journal of Southern History, February 2017. [https://centaur.reading.ac.uk/66788/7/article%20\(1\)%20\(1\).pdf](https://centaur.reading.ac.uk/66788/7/article%20(1)%20(1).pdf)

¹¹ Laura Santhanam, “Racial Disparities Persist for Breastfeeding Moms. Here’s Why.” PBS News Hour, August 29, 2019. <https://www.pbs.org/newshour/health/racial-disparities-persist-for-breastfeeding-moms-heres-why>

¹² Amanda J. Calhoun, “Slavery and Racism Drive a Toxic Double Standard About Breastfeeding,” The Washington Post, June 8, 2022. <https://www.washingtonpost.com/outlook/2022/06/08/slavery-racism-drive-toxic-double-standard-about-breastfeeding/>

¹³ Ibid

¹⁴ Santhanam

¹⁵ Ifeyima Asiodiu, Kimafrie Bugg, and Aunchalee Palmquist, “Achieving Breastfeeding Equity and Justice in Black Communities: Past, Present and Future, Breastfeeding Medicine, June 7, 2021. <https://pubmed.ncbi.nlm.nih.gov/33979550/>

¹⁶ Santhanam

¹⁷ Kathrin Litwan, Victoria Tran, Kate Nyhan, and Rafael Perez-Escamilla, “How Do Breastfeeding Workplace Interventions Work?: A Realist Review,” International Journal for Equity in Health, June 25, 2021. <https://equityhealth.biomedcentral.com/articles/10.1186/s12939-021-01490-7>

¹⁸ Chiang, Li, Anstey, and Perrine

¹⁹ Ibid

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²⁰ Litwan, Tran, Nyhan, and Perez-Escamilla

²¹ “Examining State Innovation to Advance Breast Feeding and Health Equity” ASTHO Report, Association of State and Territorial Health Officials, November 16, 2021. <https://www.astho.org/topic/report/examining-state-innovations-to-advance-breastfeeding-health-equity/>

²² Santhanam

²³ Litwan, Tran, Nyhan, and Perez-Escamilla

²⁴ Ibid

²⁵ Ibid

²⁶ Analysis excludes workers with unreported data on race and ethnicity, accounting for 5.5 percent of MCG full-time workforce.

²⁷ The Office of Human Resources tracks Latinx as a distinct racial category; thus Latinx people are not included in other racial groups throughout this impact statement, unless where otherwise noted.

²⁸ Analysis excludes workers with unreported data on race and ethnicity, accounting for 5.5 percent of MCG full-time workforce.

²⁹ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council

³⁰ Asiodiu, Bugg, and Palmquist

³¹ “Changing the System to Address Racial Inequities in Breastfeeding,” Fact Sheet, ChangeLab Solutions, May 2018.

https://www.changelabsolutions.org/sites/default/files/2019-08/ChangingTheSystemToAddressRacialInequitiesInBreastfeeding_FINAL_FACTSHEET_20180529_0.pdf

³² UNICEF and WHO launched the Baby-Friendly Hospital Initiative to encourage health facilities worldwide to better support breastfeeding. There is substantial evidence that implementing the Ten Steps to Successful Breastfeeding developed by the initiative significantly improves breastfeeding rates. More information: <https://www.unicef.org/documents/baby-friendly-hospital-initiative>

³³ “Changing the System to Address Racial Inequities in Breastfeeding,” Fact Sheet, ChangeLab Solutions, May 2018.

https://www.changelabsolutions.org/sites/default/files/2019-08/ChangingTheSystemToAddressRacialInequitiesInBreastfeeding_FINAL_FACTSHEET_20180529_0.pdf

³⁴ Analysis excludes workers with unreported data on race and ethnicity, accounting for 5.5 percent of MCG full-time workforce.